

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEFFANIE CHAU,

Appellant,

v.

EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

) Case No. RED-01-0012

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on January 29, 2002.

1.2 **Appearances.** Appellant Steffanie Chau appeared *pro se*. Colin Jackson, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a two-month reduction in salary for neglect of duty, inefficiency, insubordination, malfeasance, gross misconduct and willful violation of published employing agency rules and regulations. Respondent alleged that Appellant used state resources and accessed confidential information to distribute an email to various agency employees in which she made disparaging remarks about her supervisor.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Parramore v Dep't of Social & Health Services, PAB No. D94-135 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

## II. FINDINGS OF FACT

2.1 Appellant Steffanie Chau is an Accountant 2 and permanent employee for Respondent Employment Security Department. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 12, 2001.

2.2 By letter dated February 26, 2001, Paul Trause, Acting Commissioner, informed Appellant of her reduction in pay from range 40, step K, to range 40 step H, effective March 16, 2001 through May 15, 2001. Mr. Trause charged Appellant with neglect of duty, inefficiency, insubordination, malfeasance, willful violation of agency regulations and gross misconduct. Mr. Trause specifically alleged that Appellant used state resources and accessed confidential information to distribute an email to various agency employees in which she made disparaging remarks about her supervisor.

2.3 Appellant works in the Fiscal unit of the Treasurer's Office of the Employment Security Department as an Accountant 2.

2.4 On June 6, 2000, Appellant sent an email to her supervisor Fely Meixsel, Harvey Perez, Treasury Manager, and several other employees in her work unit, in which she accused Ms. Meixsel

1 of lying. Appellant also claimed that if she (Appellant) wanted to get a promotion, she had to buy  
2 Ms. Meixsel "gifts and goodies." The email was in response to the employment status of another  
3 employee who Appellant believed had been improperly hired by the department.

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5 2.5 After receiving the email, Mr. Perez and Ms. Meixsel met with Appellant to discuss their  
6 concerns with the content of the email message. Mr. Perez explained that it was inappropriate  
7 behavior to publicly accuse her supervisor of lying and of following inappropriate hiring practices.  
8 Mr. Perez advised Appellant that any issues or concerns she had with personnel matters should be  
9 addressed directly with him or with human resource staff and not with other staff. When Mr. Perez  
10 directed Appellant to discontinue sending emails to staff addressing personnel matters, Appellant  
11 responded that she would do it again and that the next time, she would send the email to the "entire  
12 department."

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14 2.6 As a follow up to the meeting, Mr. Perez wrote Appellant a memorandum confirming their  
15 discussion. The memo, dated June 9, 2000, again reminded Appellant that it was unacceptable and  
16 inappropriate to use agency time and resources to discuss information regarding personnel issues  
17 involving another coworker. Mr. Perez warned Appellant that similar misconduct would lead to  
18 disciplinary action. Mr. Perez further reminded Appellant of the agency's policy that requires  
19 employees to work cooperatively with coworkers and make appropriate use of time and resources.

20  
21 2.7 On June 27, 2000, Appellant distributed an email to numerous intermittent employees  
22 complaining about what she perceived to be inappropriate hiring practices by the department.  
23 Appellant specifically claimed that the Fiscal and Treasury department failed to follow hiring  
24 guidelines and was unfair and utilized "back door" practices to hire and promote selected  
25 individuals. Appellant accused a temporary employee of being appointed to an Office Trainee  
26 position because she "brown nosed" the supervisor and bought her gifts and lunches.

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2 2.8 Appellant accessed confidential employment information on the agency's computer system  
3 to identify the email addresses of the intermittent status employees. Appellant was not authorized  
4 to access or review this information and it was not information she utilized during the normal  
5 course of her duties.

6  
7 2.9 Because Ms. Meixsel was the supervisor in Appellant's unit, she understood that she was  
8 the subject of Appellant's email message. Ms. Meixsel was upset and embarrassed that the email,  
9 which contained misleading and untruthful allegations, had been distributed to other staff.

10  
11 2.10 Following a review into the incident, Mary Kristofferson, Deputy Assistant Commissioner,  
12 met with Appellant to discuss the allegations that she used confidential information, work time and  
13 equipment and materials and facilities for personal purposes; made inaccurate and derogatory  
14 remarks about her supervisor, other managers and coworkers; and failed to comply with lawful and  
15 reasonable supervisory directives. During the meeting, Appellant admitted to Ms. Kristofferson  
16 that she issued the email.

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18 2.11 Based on the serious allegations made by Appellant against her supervisor, Respondent  
19 conducted an internal examination to determine whether the department or supervisory staff  
20 violated the agency's hiring rules by accepting gifts and misapplying the hiring rules and  
21 regulations. However, the investigation concluded that there was no merit to Appellant's  
22 complaints. The Washington State Auditor's office also conducted an investigation and concluded  
23 that the allegations were "incorrect and groundless."

24  
25 2.12 Paul Trause, Deputy Commissioner, is Appellant's appointing authority. He conferred with  
26 Ms. Kristofferson about her findings and her determination that Appellant engaged in misconduct.

1 Ms. Kristofferson relayed to Mr. Trause that after meeting with Appellant, she did not believe that  
2 Appellant understood the seriousness of her actions or that she felt any remorse over her actions.  
3 Based on his review of the email and the discussion with Ms. Kristofferson, Mr. Trause ultimately  
4 concluded that Appellant's pattern of behavior and use of the agency's computer system to retrieve  
5 sensitive information for personal purposes warranted a disciplinary sanction. Mr. Trause felt there  
6 were no mitigating factors for Appellant's actions. Mr. Trause concluded that Appellant's behavior  
7 was inappropriate, and he was concerned that Appellant's behavior was escalating because she had  
8 made an explicit threat to Mr. Perez in defiance of a supervisory directive and then followed  
9 through with sending an email to agency staff. Mr. Trause was also concerned that Appellant was  
10 making unfounded allegations against her supervisor and spreading them throughout the agency.  
11 Mr. Trause concluded that a two-month reduction in pay was the appropriate sanction.

12  
13 2.13 Respondent has adopted Policy #1016 which addresses employee conduct and requires  
14 employees to behave themselves in a way that contributes to cooperative relationships with  
15 coworkers and makes appropriate use of time and resources.

### 16 17 **III. ARGUMENTS OF THE PARTIES**

18 3.1 Respondent asserts that Appellant was warned not to involve or email other staff about the  
19 employment status of coworkers. Respondent argues that despite those warnings, Appellant  
20 threatened to reengage in the behavior. Respondent argues that Appellant followed through on her  
21 threat when she distributed the June 27, 2000 email to numerous employees. Respondent asserts  
22 that the contents of the email were inappropriate and contained disparaging remarks that  
23 Appellant's supervisor was following inappropriate hiring practices and accepting gifts for  
24 permanently hiring an employee. Respondent argues that Appellant inappropriately used the  
25 agency's facility, time and equipment to view sensitive and confidential information to retrieve the  
26 email addresses of the recipients. Respondent further argues that Appellant's actions disrupted the

1 employees' work and created a ripple effect because the recipients of the email did not understand  
2 why they received the email and were drawn away from their duties to ask about the email.  
3 Respondent argues that it imposed the least restrictive disciplinary measure possible, a reduction in  
4 salary, to deter future misconduct by Appellant.

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6 3.2 Appellant admits that she issued the email, however, she asserts that she was sharing  
7 information with other staff about how the personnel guidelines were being abused and applied  
8 unfairly. Appellant further asserts that she was telling the truth. Appellant denies that she accessed  
9 confidential information for personal purposes, and she asserts that the information is accessible to  
10 anyone. Appellant further contends that there is no agency policy on use of equipment and that she  
11 created the email during her break and lunch periods. Appellant asserts that she has been treated  
12 disparately and that other staff members that misused state computers were not disciplined.

#### 13 14 IV. CONCLUSIONS OF LAW

15 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
16 herein.

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18 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
19 the charges upon which the action was initiated by proving by a preponderance of the credible  
20 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
21 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
22 Corrections, PAB No. D82-084 (1983).

23  
24 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
25 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
26 of Social & Health Services, PAB No. D86-119 (1987).

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2 4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the  
3 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
4 effective operations as measured by a comparison of production with use of resources, using some  
5 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
6 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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8 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
9 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
10 Dep't of Social & Health Services, PAB No. D94-025 (1995).

11  
12 4.6 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to  
13 do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with  
14 the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-  
15 135 (1995).

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17 4.7 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry  
18 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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20 4.8 Willful violation of published employing agency or institution or Personnel Resources  
21 Board rules or regulations is established by facts showing the existence and publication of the rules  
22 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
23 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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25 4.9 Respondent has met its burden of proof that Appellant's conduct in distributing an email in  
26 which she accused her supervisor of failing to follow appropriate agency hiring guidelines was

1 inappropriate. Furthermore, Appellant did not have the authority to access confidential data using  
2 the agency's computer system. Appellant's email was disparaging, harmed Ms. Meixsel's  
3 credibility as a supervisor, and had a negative effect on the workplace. Furthermore, Respondent  
4 had previously given Appellant a letter addressing similar unacceptable behavior and she was given  
5 clear expectations not to repeat her actions. Nevertheless, Appellant continued to exhibit similar  
6 behavior. Appellant's misconduct constituted a neglect of her duty, insubordination, willful  
7 violation of agency policy and an inefficient use of her work time. However, Respondent has failed  
8 to prove that Appellant's actions constituted malfeasance or rose to the level of gross misconduct.

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10 4.10 In assessing the level of discipline here, we find that a two-month reduction in pay is not too  
11 severe in light of the directives Respondent has given Appellant about appropriate workplace  
12 behavior. Therefore, the appeal should be denied

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14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steffanie Chau is denied.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

18  
19 WASHINGTON STATE PERSONNEL APPEALS BOARD

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21 \_\_\_\_\_  
22 Walter T. Hubbard, Chair

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24 \_\_\_\_\_  
25 Gerald L. Morgen, Vice Chair